

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 16759 OF 2023
IN
FIRST APPEAL NO. 1036 OF 2023

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Rajan Dashrath Navghare

... Applicant

IN THE MATTER BETWEEN

Rajan Dashrath Navghare

... Appellant
(Orig Defendant No. 1).

Vs.

Deepashri Dilip Pawaskar And Ors.

... Respondents

WITH
INTERIM APPLICATION NO. 16768 OF 2023
IN
FIRST APPEAL NO. 1139 OF 2023

Vijay Dashrath Navghare

... Applicant

IN THE MATTER BETWEEN

Vijay Dashrath Navghare

... Appellant
(Orig Defendant No. 3).

Vs.

Deepashri Dilip Pawaskar And Ors.

... Respondents

Adv. Raghuraj S. Deshpande i/by Adv. Aneesh Deshpande for the Appellant
in both Appeals and for Applicant in both Interim Applications.

Adv. Sham Thakur, a/w Adv. Yash Dewal, for Respondent No. 2 in
FA/1139/2023 and for Respondent No. 3 in FA/1036/2023.

Adv. Sanjeev Kadam a/w Adv. Soham Balvi, Adv. Neera Jagtap i/by Kadam

& Co. for the Respondent No. 4 in both FA's.

CORAM : KISHORE C. SANT, J.

DATE : 13th FEBRUARY, 2024

PC:-

1. Heard the parties on the point of interim relief. It is the case of the Appellant/Defendant No. 1 and 3 in First Appeal No. 1036 of 2023 and First Appeal No. 1139 of 2023 respectively that their father and uncle viz., Dashrath Navghare and Kesarinath Navghare were the joint owner of a building viz., 'Radha Nivas'. In 1995 the said building was given for re-development to Defendant No. 4 (Respondent No. 4 herein). It was agreed in the said agreement that Dashrath Navghare will be entitled to receive constructed area of 750 sq.ft whereas Kesarinath Navghare will get 750 sq.ft. Constructed area. The Plaintiff No. 1 is the daughter of Dashrath Navghare. Defendant Nos. 1 to 3 are the sons of Dashrath Navghare. There was understanding that the each son of Dashrath Navghare will get Flat of 250 sq.ft each. The daughter was also by mutual understanding, inducted as a tenant in one of the rooms i.e. room no. 4. It was understanding that by virtue of permanent alternative, accommodation agreement she will also get a flat of 300 sq.ft. It is submitted that this was the clear understanding between the parties and this was a family arrangement.

2. It is the case of the Appellant that, in spite of this position the

Plaintiff filed a suit for partition after death of Dashrath Navghare (died in 2004) in 2013 for partition. The learned Trial Court held that the Plaintiff never surrendered or relinquished her share in the property. She was given a flat in the new building as she was a tenant in the property. Thus the right of the Plaintiff was independent and not as a member of the family. There is nothing on record to show that she was inducted as a tenant in lieu of her share in the property.

3. The case of the present Appellants is that, the tenancy agreement in favour of the Plaintiff was executed on 11/03/1995, whereas the development agreement took place immediately on 01/04/1995. This clearly shows that the tenancy was created with the understanding of family arrangement, though orally.

4. This Court finds that, there is no specific agreement for family arrangement between the parties. However, still it appears that there is some arguable case made out on merits. This Court had already admitted the Appeals. It would be therefore in the interest of justice to stay the decree. During the course of argument it has also come that sister is already occupying the flat given to her. The Defendants brothers are however staying in the flat of 250 sq.ft only and no partition is feasible of the flats.

5. Considering these, this Court finds that sufficient case is made out to protect interest of the Appellants/Original Defendants, hence, the following Order is passed.

ORDER

- a) The Applications are partly allowed.
- b) The Trial Court may proceed with the execution proceeding. However, there shall be no actual handing over of possession of the suit properties pending the appeal.
- c) Both Applications stand disposed of.
- d) The Appellants shall not create any third party interest in the properties.

(KISHORE C. SANT, J.)